CF0000058157

IN THE HIGH COURT OF M.P. : AT JABALPUR

Criminal Appeal No. 193 /1995

APPELLANT (In Jail) : Ramprasad alias Gihli, S/o Jhaduram Yadav, resident of Amoda, (aged 40 years), Thana-Janjgir, Distt. Bilaspur.

-Versus-

RESPONDENT : State of Madhya Pradesh, through S.O., Janjgir, District - Bilaspur.

APPEAL UNDER SECTION 474 CRIMINAL PROCEDURE CODE FROM CONVICTION TO LIFE IMPRISONMENT UNDER SECTION 302 I.P.C.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 193 of 1995

Appellant : Ramprasad @ Tihali

Vs.

Respondent : State of Madhya Pradesh

Shri K.K.Singh, learned counsel for the appellant.

Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Ravindra Agrawal, learned Panel Lawyer for the respondent/State.

ORAL JUDGMENT
(20.02.2006)

L.C.Bhadoo, J

The accused/appellant has preferred this appeal under Section 374(2) of the Criminal Procedure Code questioning the legality and correctness of the judgment of conviction and order of sentence dated 27.01.95 passed by learned Additional Sessions Judge, Sakti in S.T. No. 153/93 whereby the learned Session Judge after holding the accused/appellant guilty for commission of murder of one Ashok convicted him under Section 302 of the Indian Penal Code and sentenced the accused/appellant to undergo imprisonment for life.

2. The brief facts of the prosecution case are that on 13.06.92 at about 4.15 a.m. P.W.-1 Ramnath lodged First Information Report Ex.P.-1 in the police station Janjgir to the effect that a day before thereto (i.e. on 12.06.92,

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Friday) in the evening when he was taking his dinner, his younger brother Suraj Prasad came and informed that Ashok has been murdered near the pond. On hearing this, he along with Suraj, Chetan & Laal Baba went to the spot carrying a lantern and saw that there were injuries on the head of Ashok and blood was oozing out of it. Receiving the report, S.H.O. registered the case under Section 302 of the IPC, left for the scene of occurrence after giving notice P-2 to the panchas, prepared panchnama P-3 of dead body of Ashok and took into possession blood stained soil and plain soil from the place of occurrence. One cotton *Paijama*, the four broken teeth and one piece of bone were taken into possession from the place of occurrence. The weapon of offence-*lathi* was taken into possession from the accused/appellant under P-5. Clothes of the deceased were taken into possession under P-6. Body of Ashok was sent for post mortem examination to Govt. Hospital, Janjgir where Dr. U.C.Sharma conducted the post mortem and prepared post mortem report P-7. The identification parade of the towel which was recovered from the place of occurrence was conducted by Naib Tahsildar and prepared the identification memo P-8. Site plan P-9 was prepared by the Patwari. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Janjgir who in turn committed the case to the Sessions Judge, Bilaspur from where the learned Additional Sessions Judge, Janjgir received the case on transfer for trial.

3. The prosecution in order to establish the charge against the accused examined 16 witnesses. On the other hand statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in

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	which he denied the prosecution evidence appearing against him and stated that he has been falsely implicated in the crime.	
4.	Learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused/appellant as mentioned in paragraph one of the judgment.	
5.	We have heard Shri K.K. Singh, learned counsel for the accused/appellant and Shri U.N.S.Deo with Shri Ravindra Agrawal on behalf of the State.	
6.	Homicidal death of Ashok is not in dispute.	
7.	As far as the involvement of accused/appellant in the crime in question is concerned, Shri Singh, learned counsel for the accused/appellant argued that the First Information Report was lodged by P.W.-1 Ramnath in which the name of the eye witness namely Bhagwan Das is not mentioned and P.W.-6 Bhagwan Das has stated that except P.W.-7 Taantuni, he had not disclosed about the incident to anybody else of witnessing of the crime by him. Therefore the trial Court has wrongly placed reliance on the evidence of P.W.-6 Bhagwan Das as there was no eye witness of the crime in question and the evidence of P.W.-6 does not inspire evidence therefore the conviction is bad.	
8.	On the other hand Mr. Agrawal, learned counsel for the State supported the judgment of the trial Court.	

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9.	In order to appreciate the argument advanced by the learned counsel for the accused/appellant, we have perused the evidence on record. As far as the first argument is concerned Ram Nath has stated that he was ~~नहीं~~ informed by his younger brother Suraj and he has not stated that Bhagwan Das informed him therefore non-mentioning of Bhagwan Das, the eye witness in the FIR is of no consequence. P.W.-6 Bhagwan Das has categorically stated that on the fateful day he along with Ashok and Babu went towards the pond to attend the call of nature. He and Ashok went to attend the call of the nature near the canal whereas Babu went near the culvert. After some time the accused Tihali came near to him and after looking at him he went towards Ashok. He was carrying *lathi* in his hand and he assaulted Ashok with the *lathi.* Being frightened by the act of the accused he ran way and when he reached near the tree he heard the sound of second assault. Thereafter he went to Taantuni and informed about the incident. In the cross examination this witness has stated that except Taantuni he had not informed anybody else. P.W.-7 Taantuni has stated that Bhagwan Das came and informed him that Tihali has assaulted Ashok with *lathi* and thereafter he along with Bhagwan Das went to take bath on the tank. Therefore the evidence of Bhagwan Das stands corroborated by P.W.-7 Taantuni and the defence has not been able to elicit any circumstance in the cross examination of Bhagwan Das that this witness in any way had strained relations with the accused and therefore there is no reason for this witness to implicate him in this false case. The third witness Babu Bhai who accompanied the deceased and P.W.-6 while going to attend the call of nature has not been examined because as per the record it appears that this witness has died. Moreover P.W.-5 Kumud Bai, wife of the deceased has stated that two days before the incident the	

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accused came and demanded Rs. 2,000/- which her husband refused to give on the ground that he had no money. At this the accused/appellant threatened and just after two days the incident happened. Thus, in view of the above evidence we are of the considered opinion that the findings of the trial Court convicting the accused/appellant in the crime in question, is based on the legal evidence and the same does not suffer from any illegality or infirmity. Learned counsel for the accused/appellant also submitted that the accused/appellant assaulted with *lathi* on the head and therefore the offence against the accused does not travel beyond 304-II of the IPC.

10. In order to appreciate the arguments advanced by the counsel for the appellant, we have perused the post mortem report and the evidence of Dr. U.C.Sharma who conducted the post mortem has stated that on 13.06.92 he conducted the post mortem on the body of Ashok and found that :

i) there was a lacerated wound on the right side of the head in the size of 6x1x1/2 cm.

ii) lacerated wound on the mandible region in the size of 5x2x5 cm., lower teeth was broken

iii) the lower jaw was found fractured at many places.

iv) a lacerated wound on the left side in the size of 1x1/2 x1/2 cm.

v) one incised wound on the right eye and below the right eye where the bone was fractured in the size of 5x1x4cm

vi) frontal bone of the head was found broken in the size of 4x1/2x1cm. and the brain material was lacerated.

vii) and there was contusion on the right side of the neck and chest.

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	The cause of death was shock and hemorrhage due to head injuries.	
11.	The intention could be gathered from the nature of the injuries, the place where the injuries were inflicted and the weapon of offence. If we look into the number of injuries of bones of the head, frontal bone of the head, jaw, chin were found fractured, even teeth were broken and the brain was lacerated therefore the above injuries were sufficient in the ordinary nature to cause death and the intention of the accused to cause the death of Ashok by assaulting repeatedly by *lathi* on the vital part of the organ-head was clear to commit the murder of Ashok. Therefore we do not find any substance and the appeal being devoid of merits is liable to be dismissed and it is accordingly dismissed. **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **DHIRENDRA MISHRA** **Judge**